"No application for citizenship shall be accepted unless it is presented at a citizenship office by the applicant in person *who shall be required to sign the application in the presence of a Registrar of Citizens.*"

There can be no doubt therefore that in accordance with rule 28 there is no necessity to repeat a set formula of declaration, a procedure which appears to be a legal requirement in declarations made under the Statutory Declarations Act, 1960, and the earlier Enactments and Ordinances repealed by that Act. The Registrar and Assistant Registrar of Citizens unlike those functionaries mentioned in section 2 of the Act are not in my view expected to "take and receive" declarations but are merely required to witness the signature of an applicant upon the prescribed form.

Since the learned magistrate has nowhere in his judgment stated that he disbelieved any part of the testimony of those prosecution witnesses who had been called to give evidence, I am satisfied that his acquittal of the respondent under section 173 (g) of the Criminal Procedure Code was wrong in law.

Accordingly this appeal is allowed and the order of acquittal and discharge set aside. I have been given to understand that the learned magistrate who heard this case has since retired and I therefore order a retrial.

Appeal allowed. Retrial ordered.

Solicitors: *Jayadeva, Zahir & Ismi.*

LIM JOO TONG v. KOH JOO CHUA

[O.C.J. (Wee Chong Jin C.J.) March 17, 1970]

[Singapore — Suit No. 606 of 1969]

Damages — Personal injuries — Interest — Award of — Discretion of court — Civil Law Ordinance (Cap. 24) s. 8.

In this case after the court having found in favour of the plaintiff in his claim for damages for personal injuries, his counsel asked the court to award interest under section 8 of the Civil Law Ordinance.

Held: (1) the power given under section 8 of the Ordinance is a discretionary one. The words "the court may, if it thinks fit" enable a judge, viewing the matter broadly and if in his opinion the circumstances warrant it, to exercise the discretion given to him to award interest on the damages;

(2) having regard to this unfettered discretion it is undesirable to enumerate under what circumstances and what are the elements which ought to be present before interest should be awarded. It is wrong to attempt to lay down the principles which should be acted on by a judge when considering a claim for an award of interest under section 8 as that would amount to an attempt to impose a fetter on what is an unfettered discretion which a judge has under that section.

[Editorial Note: Reference may be made to *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253 digested in §3592 in *Mallal's* Digest 3rd edn. and cases etc. mentioned in the annotation thereto, and also *Yee Boon Heng* v. *Tan Chwee* [1967] 2 M.L.J. 157 digested in §3593 in *Mallal's* Digest, *supra.* In England awarding interest on damages is mandatory, see [1970] 1 M.L.J. xli.]

Case referred to:-

(1) *Jefford* v. *Gee* [1970] 2 W.L.R. 702.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

M. P. D. Nair for the defendant.

Cur. Adv. Vult.

Wee Chong Jin C.J.: At the conclusion of the hearing I gave my reasons for finding in favour of the plaintiff and holding that the defendant was solely to blame for the injuries sustained by the plaintiff as a result of the collision between the plaintiff's motorcycle and the defendant's motor-car.

Mr. Cashin asks the court to award interest under section 8 of the Civil Law Ordinance, the relevant provisions of which are as follows: —

"In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the period between the date when the cause of action arose and the date of the judgment."

While admitting that our High Court has never, to his knowledge, awarded interest in personal injury cases, he contends that as a very recent decision of the English Court of Appeal has set out the principles to be applied in awarding interest in personal injury cases, those principles should guide the High Court in considering claims by a successful plaintiff in personal injury cases. The case is *Jefford* v. *Gee*(1) reported in the London *Times* issue of 5th March 1970. The judgment of the Court of Appeal was delivered by the Master of the Rolls in which he said —

"Gathering together the best of the reasoning from those various sources. the principles to be applied in awarding interest in personal injury cases were: interest should not be awarded as compensation for the damage done; it should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him.

Special damages should be dealt with on broad lines. Losses, expenditure and receipts should all go into one pool. In all ordinary cases it would be fair to award interest on the total sum of special damages from the date of the accident until the date of trial at half the rate allowed on the other damages. Where the loss or damage to the plaintiff was future pecuniary loss (loss of future earnings) there should in principle be no interest. The plaintiff would not have been kept out of any money.

When the compensation payable to a plaintiff was for pain, suffering and loss of amenities, he should be awarded interest on it. But such interest should not run from the date of the accident because such misfortunes had to be quantified later. The court always awarded compensation for them in one indivisible lump sum. Interest should be awarded on that lump sum as from the time when the defendant ought to have paid it but did not. Interest on damages for pain, suffering and loss of amenities should run from the date of service of the writ to the date of trial. That should stimulate the plaintiff's advisers to issue and serve the writ without delay."

It should be noted, however, that the Court of Appeal, though dealing with a case which was tried before section 22 of the Administration of Justice Act, 1969 which makes it compulsory for courts to award interest in personal injury cases from 1st January 1970, was attempting to set out the principles on which a court should act in awarding interest under section 22 of the Administration of Justice Act, 1969. In the present case the power given under section 8 of the Civil Law Ordinance to award interest on damages is a discretionary one and in my opinion, having regard

to the language of that section, is a discretion which seems to be as unfettered as any discretion can be. In my judgment the words "the court may, if it thinks fit" enable a judge, viewing the matter broadly and if in his opinion the circumstances warrant it, to exercise the discretion given to him to award interest on the damages.

It seems to me undesirable having regard to this unfettered discretion to attempt to enumerate under what circumstances and what are the elements which ought to be present before interest should be awarded. It seems to me also quite wrong to attempt to lay down the principles which should be acted on by a judge when considering a claim for an award of interest under section 8 of the Civil Law Ordinance as that would amount to an attempt to impose a fetter on what I consider to be an unfettered discretion which a judge has under that section.

Taking the circumstances as I find them in this case and viewing the matter broadly, I do not propose to exercise my discretion to award interest on the whole or any part of the agreed damages.

There will, therefore, be judgment for the plaintiff for $5,469 damages and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; M. P. D. Nair.*

RE BALASINGAM & PARAVATHY, INFANTS KANNAMAH v. PALANI

[O.C.J. (Raja Azlan Shah J.) March 19, 1970]

[Kuala Lumpur — Originating Summons No. 248 of 1969]

Infants — Meaning of — Guardianship of Infants Act, 1961 — Whether it applies to illegitimate children.

Infants — Custody — Illegitimate children — Application by unmarried mother for custody order — Whether High Court has jurisdiction to entertain application — Guardianship of Infants Act, 1961.

Civil Law Ordinance, 1956, s. 27 — Custody and control of infant — Applicability of English law.

In this case the applicant applied under the Guardianship of Infants Act, 1961 for custody of her two infant children. There was a dispute as to whether she was legally married to the respondent but for the purpose of this case, it was assumed that there was no valid marriage. The question before the court was whether the High Court has jurisdiction to entertain an application by the *de facto* mother for a custody order under the Guardianship of Infants Act, 1961.

Held, dismissing the application: (1) "infant" means legitimate infant unless there is some repugnancy or inconsistency and not merely some violation of a moral obligation or of a probable intention resulting from so interpreting the word. Accordingly, since none of the words "father", "mother" or "infant" appearing in sections 5 and 6 of the Act can be construed to mean illegitimate infant or the *de facto* parents of illegitimate children, it must be concluded that the Act does not apply to illegitimate children and therefore this court has no jurisdiction to make the order sought. However the applicant has a remedy, as she can still institute wardship proceedings;

(2) English law is applicable to cases relating to custody and control of children but regard is to be had to the religion and customs of the parties.

Cases referred to:-

(1) *Re Miskin Rowter* [1963] M.L.J. 341.

(2) *In re C.T. (an infant)* [1957] Ch. 48.

(3) *In Re A.* (1940) 164 L.T. 230.

(4) *Galloway* v. *Galloway* [1955] 3 All E.R. 429.

(5) *Ponniah Pillai* v. *Senthamarai* [1954] M.L.J. 175.

ORIGINATING SUMMONS.

M. Mahalingam for the applicant.

G. Vadiveloo for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: In this case, the applicant applies for custody of her two infant children. There is dispute as to whether she is legally married to the respondent but for the purposes of this case, it will be assumed that there was no valid marriage. The question to be settled before the court can go into the merits of the case is whether this court has jurisdiction to entertain an application by the *de facto* mother for a custody order under the Guardianship of Infants Act, 1961.

Counsel for the applicant contends that the court has been granted original jurisdiction under section 24(d) and (e) of the Courts of Judicature Act, 1964 in addition to the Guardianship of Infants Act, 1961. Section 24 of the Courts of Judicature Act, 1964 states:

"Without prejudice to the generality of the provisions of the last preceding section, the civil jurisdiction of every High Court shall include:—

(d) jurisdiction to appoint and control guardians of infants and generally over the person and property of infants;

(e) jurisdiction to appoint and control guardians and keepers of the persons and estates of idiots, mentally disordered persons and persons of unsound mind."

He argued that under English law, there is no corresponding section to our section 24 of the Courts of Judicature Act, 1964. The case of *Re Miskin Rowter*[1] was cited in which the guardianship of an illegitimate child was given to the natural mother.

Counsel for the respondent contended that it cannot be said that the Parliament did not have illegitimate children in contemplation when drafting the Guardianship of Infants Act, 1961 because section 1(2)(a) specifically mentions illegitimate children and which states as follows:

"Nothing in this Act shall apply in any State to persons professing the Muslim religion until this Act has been adopted by a law made by the Legislature of that State; and any such law may provide that —

(a) nothing in this Act which is contrary to the Muslim religion or the custom of the Malays shall apply to any person under the age of eighteen years who professes the Muslim religion and whose father professes or professed at the date of his death that religion or, in the case of an illegitimate child, whose mother so professes or professed that religion;"

He further argued that if "mother" in section 6 of the same Act is given a wider interpretation to mean *de facto* mother, then "father" in section 5 would also include a putative father. Question may arise as to who the putative father is so that the sections cannot refer to the putative father and mother and accordingly, mother must mean legal mother and father must mean legal father.